**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No. 574 of 2005**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHANDUBHAI MAGANBHAI VASAVA**

**Versus**

**THE STATE OF GUJARAT**

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**Appearance :**
MR JB PARDIWALA for the Applicant
MS HB PUNANI, ADDITIONAL PUBLIC PROSECUTOR for the Respondent

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**CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI**

**Date : 10/04/2006**

**ORAL JUDGMENT**

1. The present Criminal Revision Application is filed by the original accused being aggrieved by order dated 07.07.2005 passed below Exh.9 in Criminal Appeal No.15 of 2004 by the Presiding Officer and Additional Sessions Judge, Fast Track Court No.7, Bharuch at Rajpipla.

2. The appellant has filed Exh.9 application praying

that he be permitted to produce a copy of NC (non-cognizable complaint) No.34 of 1996 filed and registered at Valiya Police Station. It was prayed that taking into consideration the circumstances mentioned in the application, under Section 391 of the Criminal Procedure Code, the appellate Court be pleased to order to record additional evidence related to that NC complaint and/or to examine other independent witnesses or the same be recorded before the appellate Court itself.

3. The learned appellate Judge after hearing both the parties, rejected the application on the ground that the Court is of the opinion that no additional evidence is necessary. The learned appellate Judge held that it is only in cases where the appellate Court thinks that the additional evidence is necessary, it shall record its reasons for the same and than allow such evidence to be taken either by itself or direct a Magistrate or when the appellate Court is a High Court, by a Court of Session or a Magistrate.

4. It is not in dispute that the NC was filed against the same Police Sub Inspector, who registered an offence punishable under Section 186, 504 and 506 of the Indian Penal Code pursuant to the FIR lodged against the

applicant (original accused) on 23.06.1996. It is alleged against the applicant that the applicant voluntarily obstructed the Police Sub Inspector being a public servant in the discharge of his public functions by going to the Police Station and accusing the Police Sub Inspector of registering false cases and arresting innocent persons. It was also alleged against the applicant that he intentionally insulted the public servant with intent to provoke breach of the peace thereby committing offence under Section 504 of the Indian Penal Code. It was alleged against the applicant that the applicant committed offence of criminal intimidation punishable under Section 506 of the Indian Penal Code.

It is important to note that pursuant to the FIR which was lodged by the Police Sub Inspector himself against the present applicant at Valiya Police Station, investigation was carried out against the applicant and the learned Judicial Magistrate First Class took cognizance, which resulted into a Criminal Case No.220 of 1997 and the applicant was convicted for the offence punishable under Sections 186 and 506 of the Indian Penal Code. The applicant is sentenced to undergo a simple imprisonment for a period of 3 months for the offence

vide judgment and order dated 17.02.2004. It is against this judgment and order that Criminal Appeal No.15 of 2004 is pending in the Court of Presiding Officer and Additional Sessions Judge, Fast Track Court No.7, Bharuch at Rajpipla. There, Exh.9 application is filed. The fact that factum of that NC is not denied by the police authorities, production of NC and related evidence becomes necessary before the appellate Court. The learned appellate Judge ought to have taken that view in the matter.

5. Section 391 of the Criminal Procedure Code is an empowering Section. It provides for, 'taking of further evidence by the appellate Court', wherever the appellate Court is of the opinion that, 'additional evidence is necessary; and for that it shall record its reasons'. This is to mean that the appellate Court in the matter where production of additional evidence is going to advance the cause of justice, should allow the same. The Section should not be interpreted to mean that it is only in the cases when it is felt by the Court that absence of the additional evidence is to result in the failure of the case and only in such cases, the additional evidence be allowed. Even if the additional evidence is going to throw some light in advancement of justice, the same

should be allowed.

6. In view of the aforesaid discussion, this Revision Application is allowed. Rule is made absolute. Order dated 07.07.2005 passed by the Presiding Officer and Additional Sessions Judge, Fast Track Court No.7, Bharuch at Rajpipla in Criminal Appeal No.15 of 2004 is quashed and set aside. 'NC' be taken on record. Further evidence, if any, be also recorded either by the learned appellate Judge himself or he may direct the Magistrate to record the same.

(RAVI R.TRIPATHI, J.)

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